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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NUMBER: 6496/2020

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 3 November 2025

SIGNATURE:

In the matter between

MEC OF HEALTH, LIMPOPO PROVINCE

1ST APPLICANT

MAKOMA MAVIES MODIKA

2ND APPLICANT

-and-

AUBREY MOKGOLA

1ST RESPONDENT

SHERIFF, POLOKWANE HIGH COURT

2ND RESPONDENT

Delivered : 3 November 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **3 November 2025 at 10:00 am.**

Date heard : 30 October 2025

Coram : Bresler AJ

JUDGMENT

BRESLER AJ:

Introduction:

[1] The Applicants applied on an urgent basis for an order staying the writ in execution that was issued and served on the Applicants on the 25th of July 2025 and pending relief contemplated in Part B of the application.

[2] Part B in return prays for an order reviewing and setting aside the writ and declaring that the judgment debt was paid in full.

[3] The Notice of Motion of the Applicant is somewhat confounding. If one has regards to the Founding affidavit, it appears that the relief in Part A and Part B is sought simultaneously.

[4] The application was served on the Respondent's attorney on the 16th of October 2025 directing that the Respondent is entitled to deliver its Notice of intention to oppose by 17 October 2025 and thereafter file his Answering affidavit by 20 October 2025.

[5] When the matter initially came before court on the 28th of October 2025, the court did not have access to the Caselines document and could consequently not hear the matter. The Applicants then granted access to the court and re-enrolled the matter on Thursday, 30 October 2025.

[6] The court recorded that arguments relating to urgency will be limited to the enrolment of the matter on Tuesday, as the Applicants could not be blamed for not properly and timeously ensuring that the correct presiding judge and secretary is invited.

[7] The Applicants' case is briefly the following:

7.1 The 1st Respondent instituted action against the 1st Applicant which action culminated in a settlement being made an order of court on the 24th of May 2024.

7.2 On the 3rd of December 2024, the BAS payment advice was prepared and approved for payment. The 1st Respondent's attorneys were however not registered on the system of service providers and the required documentation was thus presented to the said attorneys for completion. The documents were submitted on 10 January 2025.

7.3 On the 20th of January 2025, the 2nd Respondent removed certain goods that were previously attached and delivered an invoice in the amount of R641,603.00 which included capital, interest and the Sheriff's costs at the time. An additional amount of R19,778.62 was claimed in respect of storage costs.

7.4 On the 14th of February 2025, the amount as demanded by the 2nd Respondent was paid to their offices and the vehicles were released back to the 1st Applicant.

7.5 On the 17th of July 2025, the 1st Respondent re-issued the writ of execution wherein a further amount in the sum of R86,746.63 was claimed. On the 25th of July 2025, the sheriff arrived and attached a motor vehicle (Ford Ranger with registration number: G[...]). The vehicle has not yet been removed.

7.6 The Applicants claim that the application is urgent as the 1st Respondent issued and caused the warrant to be executed notwithstanding the judgment debt being paid in full. The Sheriff is entitled to remove the goods after expiry of a period of 30 (thirty) days from the date of attachment. The Applicant cannot sit and wait until the vehicle is removed.

7.7 The Applicants furthermore submit that by the very nature of the property that stands to be removed, it will have drastic consequences for the administration of Public Services. It is therefore in the interest of justice to stay the execution. Substantial redress will therefore not be afforded as the property will have been sold in execution.

7.8 As to the setting aside of the writ, the Applicant submits that the judgment debt was paid in full. It stands to be noted that the Applicant

pertinently states that the judgement debt was paid 'as per the sheriff's demand.'

[8] The 1st Respondent opposed the application on the following grounds:

8.1 The 1st Respondent denies that the matter is urgent. The 1st Respondent specifically avers that the alleged urgency is self-created. The Applicants had knowledge of the warrant as early as 25 July 2025 and did not provide an explanation for the delay in launching the proceedings. The Applicants were repeatedly invited to settle the outstanding balance failing which the 1st Respondent will continue with the execution thereof.

8.2 The Applicants failed to properly address the circumstances which render the matter urgent and the reasons why redress will not be afforded on the ordinary roll. These are critical requirements in terms of Uniform Rule 6(12).

8.3 The Applicants have an alternative remedy at their disposal being an application in terms of Rule 45A which can be brought on the ordinary roll.

8.4 The 1st Respondent included a detailed calculation of the judgment debt as per the judgment itself and concluded that there was a short payment of R53,876.94. It is evident from the calculation that the amount, as presented by the Sheriff, was not in accordance with the terms of the judgment. In the meantime, further interest and costs accrued.

8.5 As the issuing of the writ is a judicial act, rather than an administrative act, same cannot be reviewed as per the prayers contained in the Notice of Motion. The writ is in any event correctly issued and no grounds are submitted as to why it should be set aside.

[9] It is apposite to note that the return of service from the sheriff states that only one Ford vehicle was attached.

Issues that require determination:

[10] This Court is called upon to determine if the Applicants have made out a case for the relief prayed for and on an urgent basis.

The Applicable Legal Principles:

Urgency

[1] In the often-quoted decision of ***East Rock Trading 7(Pty) Ltd v Eagle Valley Granite (Pty) Ltd***¹ the court has once again enunciated the test that needs to be applied in urgent matters. In paragraph [8] the following is stated:

'In my view the delay in instituting proceedings is not, on its own, a ground for refusing to regard the matter as urgent. A court is obliged to consider the circumstances of the case and the explanation given. The important issue is whether, despite the delay, the applicant can or cannot be afforded substantial redress at a hearing in due course. A delay might be an indication that the matter is not as urgent as the applicant would want the court to believe. On the other hand a delay may have been caused by the fact that the Applicant was attempting to settle the matter or collect more facts with regard thereto.'

[2] The 1st Respondent is adamant that it is entitled to continue with the execution of the writ as it has been correctly issued. Once the writ has been executed the relief contemplated in the application becomes moot. If a valid sale in execution takes place, ownership transfers to the purchasers leaving the Applicants with no recourse.

[3] It is trite law that for purposes of urgency, the Court must accept for the moment that the applicant's case has merits. This Court is of the view that substantial redress will not be afforded if the matter is to be enrolled in due course and on the ordinary roll.

Merits

¹ 2011 JDR 1832 (GSJ)

[4] Rule 45A of the **Uniform Rules of Court** provides that, the court may on application, suspend the operation and execution of any order for such period as it may deem fit, provided that in the case of appeal, such suspension is in compliance with section 18 of the **Superior Court Act**, Act 10 of 2013.

[5] Contrary to the arguments submitted by the 1st Respondent that Rule 45A is the 'alternative remedy' that is available, this Court is of the view that the relief prayed for is, in fact, premised inter alia on the provisions of Uniform Rule 45A.

[6] In the judgment of De Villiers AJ in **BP Southern Africa (Pty) Ltd v Mega Burst Oils and Fuels (Pty) Ltd and Another; BP Southern Africa (Pty) Ltd v ZA Petroleum and Another**² at paragraph [25] it was held:

'A litigant with an enforceable judgment is entitled to payment, and only in rare cases would be delayed in that process. In my view there may be exceptional cases where a court would still exercise a discretion to prevent an injustice in staying execution.'

[11] A Court will grant a stay of execution where real and substantial justice is required, or an injustice will otherwise be occasioned as per the decision in **Gois t/a Shakespeare's Pub v Van Zyl and Others**³

[12] In **Mokone v Tassos Properties CC & another**⁴ the Constitutional Court held that a court has the discretion to grant a stay of proceedings if it is in 'the interests of justice' to do so and that the idea of 'interests of justice' in this context is quite wide.

[13] A court faced with an application for the suspension of execution must consider the factors that underlie the granting of interim interdicts, with due regard to the fact that an applicant is not asserting a *prima facie* right but is seeking to avoid an injustice.

² 2022 (1) SA 162 (GJ)

³ 2011 (1) SA 148 (LC) at para 37.

⁴ 2017 (5) SA 456 (CC), 2017 (10) 8CLR 1261 paras 64-72 at 4748-4768 (SA), 1278E-1280D (BCLR).

The Court must therefore be satisfied that:

13.1 The applicant has a well-grounded apprehension that the execution is taking place at the instance of the respondent; and

13.2 Irreparable harm will result if execution is not stayed, and the applicant ultimately succeeds in establishing a clear right.

[14] It follows that irreparable harm will invariably result if there is a possibility that the underlying *causa* may ultimately be removed or where the underlying *causa* is the subject matter of an ongoing dispute between the parties. *In casu*, the underlying *causa* is merely disputed to the extent that the sheriff provided the Applicants with a calculation. The 1st Respondent has clearly shown that the calculation is incorrect.

[15] The Applicants have not provided the Court with a revised calculation showing that the Sheriff's statement aligns with the terms of the judgment. In reply, the Applicants merely again submitted that they have paid what was demanded by the Sheriff. The 1st Respondent's version must therefore be accepted as correct. Having said that, it follows that the writ was correctly issued and the 1st Respondent has a right to execute his judgment.

[16] The Applicants' main contention is that the execution must still be stayed in the interest of justice as same will interrupt service delivery. As stated herein before, the sheriff only attached one Ford vehicle. The Applicants failed to expand on the importance of this specific vehicle in performing their statutory duties to the public.

[17] On this basis, the argument premised on the 'interruption of service delivery' does not assist the Applicants. The application therefore has no merit and stands to be dismissed as a whole as it would not serve any purpose to consider the relief in Part B having considered the validity of the warrant herein before.

Costs:

[18] There is not reason why the costs should not follow the outcome of the proceedings. The application is fairly uncomplicated and costs on Scale A is therefore warranted.

Order:

[19] In the result the following order is made:

- 19.1 The application is deemed to be sufficiently urgent to be entertained on the urgent roll.**
- 19.2 The Application is dismissed.**
- 19.4 The Applicants, jointly and severally, are ordered to pay the costs.**

**M BRESLER AJ
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE**

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